

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

BARBARA SHEREE HUTSON

Claimant

VS.

CUSTOM CAMPERS, INC.

Self-Insured Respondent

Docket No. **1,035,700**

ORDER

Claimant requests review of the July 16, 2012 Award by Administrative Law Judge (ALJ) Bruce E. Moore. The Board heard oral argument on November 16, 2012.

APPEARANCES

William L. Phalen of Pittsburg, Kansas, appeared for claimant. Edward D. Heath of Wichita, Kansas, appeared for the self-insured respondent.

RECORD AND STIPULATIONS

The Board has considered the entire record and adopts the stipulations listed in the Award.

ISSUES

The ALJ found claimant sustained a 10% permanent partial disability to each of her upper extremities. The ALJ also found claimant's average gross weekly wage was \$641.19.

Claimant argues the ALJ erred in calculating her average weekly wage and also in determining the nature and extent of her disability. Claimant contends her average gross weekly wage was \$837.78 and that she suffered a 20% impairment to each upper extremity.

Respondent maintains claimant sustained only a 5% functional impairment to each forearm based on the testimony of the treating physician, Dr. Black. Respondent requests the ALJ's finding on average weekly wage be affirmed.

The issues for the Board's review are:

1. Average gross weekly wage.

2. The nature and extent of claimant's disability.

FINDINGS OF FACT & CONCLUSIONS OF LAW

Having reviewed the evidentiary record, the stipulations of the parties, and having considered the parties' briefs and oral arguments, the Board makes the following findings:

Barbara Hutson began employment with respondent in 1994. Respondent manufactured fifth-wheel campers at its Chanute, Kansas facility but eventually that facility was closed. Claimant's job included assembling, hanging cabinets, doors or cornices and stapling false bottoms to the cabinets. The work required her to continuously grip and use an air screw gun and an air staple gun throughout her working day. Claimant testified she would alternate the use of her hands. Claimant reported to respondent that while performing her job duties she experienced numbness, tingling and pain in her upper extremities.

When she last worked for respondent on August 25, 2006, claimant was a full-time working supervisor. Claimant testified she earned \$13.45 an hour and was guaranteed 40 hours a week for a total base wage of \$538. Claimant testified she averaged 12 hours per week in overtime in the 26 weeks before her accident on August 25, 2006. Twelve hours of overtime at time and a half computes to \$242.10 in average weekly overtime earnings.

Claimant's health insurance coverage had a monthly value of \$250 which produces a weekly benefit of \$57.68. Based on claimant's testimony, claimant's base wage (\$538) plus her average overtime (\$242.10) and health insurance (\$57.68) compute to an average weekly wage was \$837.78.

Debbie Stirewalt, respondent's payroll manager, testified claimant received an annual pay raise effective January 30, 2006, which increased claimant's hourly rate to \$13.15 per hour. Ms. Stirewalt prepared a wage statement on February 14, 2007, in which she determined that claimant was earning \$13.15 an hour at the time when her accidental injury occurred.

The ALJ's wage computation was based largely on the wage documentation produced at Ms. Stirewalt's deposition. The components of the ALJ's wage calculation were: \$526 base wage (\$13.15 X 40 hours per week); average weekly overtime (Judge Moore included in this total not only overtime pay but also birthday pay, personal pay, and holiday pay) of \$32.46 (\$843.98 divided by 26 weeks); bonus of \$25.04 (\$1,302 divided by 52 weeks); and employer paid health insurance of \$57.69 per week. The ALJ found claimant's average weekly wage was \$641.19.

Claimant was laid off by respondent, following which she commenced employment for Neodesha Plastics in the shipping division, where she has worked since October 9, 2008. Claimant testified that her current work has not increased her upper extremity symptoms.

Claimant's current complaints were constant pain in her thumbs; tingling and numbness; and waking up a lot during the night. She has weakness of grip and has dropped coffee cups, a blow dryer, and a hair straightener. Claimant has difficulty holding onto a steering wheel, opening jars and turning door knobs.

Claimant testified:

Q. Since you went to work at Neodesha Plastics, have you seen any doctors other than Dr. Prostic?

A. No, sir.

Q. Have you had any treatment for your hands since the time, since the last time you saw Dr. Black?

A. No, sir.¹

Claimant testified her current job allows her to do a variety of activities with her hands and is not repetitive or continuous.

Dr. David Black, a board certified orthopedic surgeon, first saw claimant on February 28, 2007, at respondent's request. Claimant complained of pain and numbness in both of her hands and also shooting pain to her shoulders. Dr. Black performed a physical examination and diagnosed bilateral carpal tunnel syndrome. The doctor placed claimant's wrists in splints and ordered nerve conduction testing.

Dr. Kevin Komes performed the nerve conduction tests on claimant's upper extremities. Dr. Black discussed the findings with claimant on March 22, 2007. The EMG/NCT revealed mild to moderate bilateral carpal tunnel syndrome.

Dr. Black performed surgery consisting of a left carpal tunnel release on April 12, 2007. At an April 26, 2007 post-operative visit claimant was still having some occasional paraesthesias in her finger. On May 14, 2007, claimant's numbness was gone but she still had some tenderness over the operative scar on her left wrist. Claimant returned to see Dr. Black on June 4, 2007, at which time claimant was found to be at maximum medical

¹ R.H. Trans. by Depo. at 18.

improvement (MMI) regarding the left wrist. Dr. Black imposed no permanent work restrictions and released claimant to return to her regular duty work. Based on the *AMA Guides*,² Dr. Black opined claimant sustained a 5% permanent impairment to the left hand.

On June 7, 2007, Dr. Black performed a carpal tunnel release on claimant's right wrist. Claimant attended a post-operative visit with Dr. Black on June 18, 2007. Dr. Black removed the stitches from claimant's right wrist and released her to light-duty work. On July 12, 2007, Dr. Black prescribed occupational therapy for claimant's right wrist due to her hypertrophic (thickened and firm to touch) scar. As of August 27, 2007, claimant still had occasional numbness in her fingers. Dr. Black continued claimant's occupational therapy and released her to regular duty work.

On November 1, 2007, claimant returned to see Dr. Black due to complaints of occasional numbness in her right hand. Dr. Black opined that claimant was at MMI regarding her right carpal tunnel syndrome and he released claimant from his care. Based on the *AMA Guides*, Dr. Black provided a 5% rating for claimant's right hand. No permanent work restrictions were imposed.

Dr. Edward Prostic, a board certified orthopedic surgeon, examined claimant on February 15, 2008, at the request of her attorney. The doctor reviewed claimant's medical records, took a history and performed a physical examination. Claimant complained of intermittent numbness, tingling and pain in her thumbs. Dr. Prostic found claimant had some tenderness and positive compression tests of each ulnar nerve at the elbows. Claimant also had positive Tinel's test bilaterally and positive flexion compression testing of the median nerves bilaterally. X-rays were taken of claimant's right wrist and elbow. The x-rays revealed no abnormalities.

Dr. Prostic diagnosed claimant with bilateral carpal tunnel syndrome with physical evidence of cubital tunnel syndrome caused by her the work she performed for respondent each and every working day. The doctor recommended a repeat EMG/NCS and possible surgery if the study confirmed additional nerve compression.

Claimant returned to see Dr. Black on July 30, 2008, with complaints of pain at the base of both thumbs which would extend to the forearms and occasionally to the elbow. Claimant also reported a locking up sensation in her hands. The doctor found claimant had pain and tenderness at the base of her thumb and pain in her elbow upon tapping, however, he found no evidence of her hands locking up. Dr. Black testified:

² American Medical Association, *Guides to the Evaluation of Permanent Impairment* (4th ed.). All references are based upon the fourth edition of the *AMA Guides* unless otherwise noted.

Q. Doctor, in your examination and in your testimony concerning the July 30th visit, you have talked about tapping and her complaints over the entire areas of her wrist and elbows. How is that significant?

A. Well, that's a non-anatomical finding. I mean, the Tinel's test is positive when you tap over a nerve and it elicits pain. When they complain of numbness anywhere you tap, that's not an anatomical finding and it really doesn't indicate any nerve abnormality. It's not an anatomical finding.³

X-rays of claimant's hands were ordered by Dr. Black. The x-rays revealed claimant had mild arthritis at the base of her thumb and in the carpometacarpal joints bilaterally. Dr. Black opined claimant's thumb pain was caused by early degenerative arthritis. Since claimant still had complaints of numbness, Dr. Black ordered a repeat EMG to determine if claimant had any further neurological injury. Dr. Devendra Jain performed the repeat EMG/NCS on August 11, 2008, which revealed "very mild carpal tunnel." Dr. Jains noted he did not think "the patient's symptoms correlated with the findings that he (Dr. Jains) found on his nerve test."⁴

Claimant met with Dr. Black to discuss the results of the EMG. Claimant's October 2008 examination was the same as in the July 2008 examination. As of October 20, 2008, claimant was found to have achieved MMI and was released from Dr. Black's care. Dr. Black determined on December 17, 2008, that claimant's impairment of function had not changed.

Dr. Black testified claimant's complaints and findings did not support the diagnosis of ulnar nerve entrapment at the elbows. The diagnostic testing performed in 2007 and 2008 showed no impingement at the elbows.

Dr. Black opined:

Q. I thought you said on the EMG there was still mild --

A. There was some mild sensory changes that are many times chronic. I mean, once people have had carpal tunnel, that's not an abnormal finding for their EMG to remain abnormal even though the nerve is no longer compressed.

Q. So that would still be a result of her initial injury that required the carpal tunnel release?

³ Black Depo. at 14-15.

⁴ Black Depo. at 16.

A. That's correct.

Q. And even with that, you gave her no permanent restrictions; is that right?

A. Right. She had no restrictions from that. No.

Q. Why is that?

A. Well, I mean, people getting intermittent paresthesias after carpal tunnel is a fairly -- you know, most people don't but many people do, but it doesn't affect their strength or grip or range of motion. It's not something that's going to be aggravated with further work they do. The nerve has been released and they're not at risk to get recurrence. It's just there is some permanent damage of the nerve, hence, the permanent impairment rating for that because it's not quite like it was beforehand but, yet, it's not something that's going to progress or get worse by what they do.⁵

Dr. Black was not sure which Edition of the *AMA Guides* he used to rate claimant's forearm impairments.

On March 27, 2009, claimant was examined again by Dr. Prostic. The doctor updated claimant's medical history and found that claimant had not been treated since he saw her in February 2008.

Upon physical examination, Dr. Prostic found:

They showed evidence of continuing compression of nerves at the thoracic outlet, cubital tunnels and carpal tunnels. There was reproduction of paresthesias by pulling downward and backward each arm, and positive tests for cubital tunnel syndrome with Tinel test and compression nerve testing, and the same at the wrists. She had decreased two-point sensitivity to all fingers, so she had evidence of continuing compression of both median and ulnar nerves.⁶

Dr. Prostic's final diagnoses were continued carpal and cubital tunnel syndromes, complicated by thoracic outlet syndrome.

Based on the *AMA Guides*, Dr. Prostic found claimant had a 25% impairment to each upper extremity due to her work-related injuries.

Dr. Prostic testified:

⁵ Black Depo. at 23-24.

⁶ Prostic Depo. at 11-12.

Q. Having reviewed Dr. Jain's EMG studies that were done in August of 2008 you noted that once again there was no indication of ulnar nerve entrapment at the elbow to suggest a diagnostic testing confirmation of the cubital tunnel syndrome, correct?

A. Correct.

Q. The nerve entrapment that Dr. Jain documented in his EMG he described as mild at the median nerves at the wrist?

A. Yes.

Q. Once again, the AMA Guides to the Evaluation of Permanent Impairment Fourth Edition, Table 16 at Page 57 would provide a rating of 10 percent to the upper extremity for the mild nerve entrapment at the median nerve at the wrist?

A. Yes.⁷

Dr. Prostic testified the additional information regarding Dr. Jain's EMG testing did not change his opinions, diagnoses or impairment ratings.

The Board finds the ALJ's award should be affirmed in all respects. The award sets out detailed findings of fact and conclusions of law that are supported by a preponderance of the credible evidence, are based on the Kansas Workers Compensation Act, and hereby are adopted by the Board and incorporated into this order. The Board further finds it would serve no purpose to repeat those findings and conclusions in this decision.

As required by the Workers Compensation Act, all five members of the Board have considered the evidence and issues presented in this appeal.⁸ Accordingly, the findings and conclusions set forth above reflect the majority's decision and the signatures below attest that this decision is that of the majority.

AWARD

WHEREFORE, it is the Board's decision that the Award of ALJ Bruce E. Moore dated July 16, 2012, is affirmed in all respects.

IT IS SO ORDERED.

⁷ Prostic Depo. at 19-20.

⁸ K.S.A. 2006 Supp. 44-555c(k).

Dated this _____ day of January, 2013.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

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